

**TRIBAL-STATE COMPACT**

**BETWEEN**

**THE STATE OF CALIFORNIA**

**AND THE**

**BIG LAGOON RANCHERIA**

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BIG LAGOON RANCHERIA**

The Big Lagoon Rancheria (“the Tribe”), a federally recognized Indian tribe listed in the Federal Register, and the State of California (“the State”) enter into this tribal-state compact pursuant to the Indian Gaming Regulatory Act of 1988 (“IGRA”).

**PREAMBLE**

WHEREAS, the lands which constitute the Big Lagoon Rancheria are contiguous to Big Lagoon along the coastline of Humboldt County, contiguous to the Harry A. Merlo Recreation Area, adjacent to the Big Lagoon County Park, and across the lagoon from Humboldt Lagoons State Park; and

WHEREAS, the Tribe seeks to establish a casino on the lands that constitute the Big Lagoon Rancheria; and

WHEREAS, the State has cited various environmental concerns over the impact of a casino at that site, which include that Big Lagoon is a State ecological preserve managed by the Department of Fish and Game and is one of the few remaining naturally functioning coastal lagoons in California, is an important part of a fragile ecosystem that functions to support diverse populations of species, including three species listed under the federal Endangered Species Act, and is an environmentally sensitive habitat area within the meaning of the California Coastal Act; and

WHEREAS, in light of the State's articulated concerns regarding the potential environmental impacts of constructing and operating a casino on the lands that constitute the Big Lagoon Rancheria, the State has expressed its preference that the Tribe establish its casino at a location off of the Big Lagoon Rancheria site; and

WHEREAS, the Tribe has instituted litigation against the State to compel the State to enter a compact authorizing Class III Gaming on the Big Lagoon Rancheria site; and

WHEREAS, during the course of the litigation, the State attempted to locate a new site for the Tribe's casino which would not result in the perceived environmental impacts and which would also be supported by the local jurisdiction; and

WHEREAS, the City of Barstow has expressed a strong desire (subject to a proper environmental review) to host a tribal Gaming Facility within Barstow in order to boost economic development and employment; and

WHEREAS, in pursuit of that objective, the City of Barstow entered into an agreement with the Los Coyotes Band of Cahuilla and Cupeno Indians ("Los Coyotes Band") in support of that tribe's efforts to locate a Gaming Facility in Barstow; and

WHEREAS, at the request of the State, the Los Coyotes Band agreed to consider a single, unified casino project in which the Los Coyotes Band and the Tribe would share a parcel approved by the City of Barstow for purposes of developing two adjacent Gaming Facilities; and

WHEREAS, following careful deliberations and a determination that it would best serve their respective interests, the Los Coyotes Band and the Tribe thereafter entered into an agreement for the joint development of two compatibly designed Class III Gaming Facilities sharing access, parking, and other common amenities on a single location in the City of Barstow; and

WHEREAS, federal law allows a tribe to operate a Gaming Facility on lands that are acquired in trust for the benefit of a tribe after IGRA's effective date if after consultation with the tribe, the State, and local officials, the Secretary of Interior determines that a Gaming Facility would be in the best interests of the tribe and its members and not detrimental to the surrounding community, and the governor of the state concurs in that determination; and

WHEREAS, the Tribe has agreed to request the Secretary of Interior to take into trust for the benefit of the Tribe a parcel (the "25 Acre Parcel") pursuant to the federal process referred to above and which is within the site identified by the City of Barstow; and

WHEREAS, the Tribe and the State share an interest in fully mitigating the impacts of the operation of a Gaming Facility in the City of Barstow and in subjecting the operation of the Gaming Facility to a thorough environmental review; and

WHEREAS, in light of (i) the Tribe's willingness to relocate its Gaming Facility to the City of Barstow; (ii) the Tribe's sovereign agreement to forgo gaming and other adverse development on the environmentally sensitive land at its rancheria (which in the State's view, would have significant impacts on the environmentally

sensitive contiguous and adjacent lands); (iii) the City of Barstow's anticipated support for the proposed Gaming Facility; and (iv) the other covenants of this Compact, the Governor anticipates concurring in a determination by the Secretary of Interior that the Gaming Facility would be in the best interests of the Tribe and its members and not detrimental to the surrounding community, as long as (a) the Barstow City Council has approved of the Gaming Facility's location in the form of a resolution or other appropriate instrument, and (b) the affected community's support for the Gaming Facility is further demonstrated to the Governor; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in certain Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State, the Tribe has agreed, inter alia, to provide to the State, on a sovereign-to-sovereign basis, a fair revenue contribution from the Gaming Devices and banking and percentage card games operated pursuant to this Compact; and

WHEREAS, the Tribe and the State share a joint sovereign interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements; and

WHEREAS, this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance tribal economic development and self-sufficiency; and

WHEREAS, the State and the Tribe have therefore concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe agree that all terms of this Compact are intended to be binding and enforceable;

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

## **SECTION 1.0. PURPOSES AND OBJECTIVES.**

The terms of this Compact are designed to:

- (a) Foster a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

- (b) Develop and implement a means of regulating the Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities in accordance with IGRA, and through that regulated Class III Gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and its governmental services and programs.
- (c) Promote ethical practices in conjunction with that Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation, protect against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming, and protect the patrons and employees of the Gaming Operation and the local communities.

## **SECTION 2.0. DEFINITIONS.**

**Sec. 2.1.** "Applicable Codes" means the California Building Code and the California Public Safety Code applicable to the City of Barstow, as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

**Sec. 2.2.** "Applicant" means an individual or entity that applies for a tribal gaming license or for a State Gaming Agency determination of suitability.

**Sec. 2.3.** "Class III Gaming" means the forms of class III gaming defined in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.4.** "Compact" means this compact.

**Sec. 2.5.** "County" means the County of San Bernardino, California, a political subdivision of the State.

**Sec. 2.6.** "Financial Source" means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

**Sec. 2.7.** “Gaming Activity” or “Gaming Activities” means the Class III Gaming activities authorized under this Compact in section 3.1.

**Sec. 2.8.** “Gaming Device” means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system of such terminals or stations. "Gaming Device" includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

**Sec. 2.9.** “Gaming Employee” means any natural person who (a) conducts, operates, maintains, repairs, accounts for, or assists in any Class III Gaming, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

**Sec. 2.10.** “Gaming Facility” or “Facility” means any building in California in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation.

**Sec. 2.11.** “Gaming Operation” means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

**Sec. 2.12.** “Gaming Ordinance” means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe’s Indian lands in California and approved under IGRA.

**Sec. 2.13.** “Gaming Resources” means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and

services, and Class III Gaming consulting services. “Gaming Resources” does not include professional accounting and legal services.

**Sec. 2.14.** “Gaming Resource Supplier” means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Tribe’s Gaming Operation or Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any 12-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Tribe’s Gaming Operation or Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive 12-month period, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

**Sec. 2.15.** “IGRA” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**Sec. 2.16.** “Interested Persons” means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, and (ii) persons, groups, or agencies that request in writing a notice of preparation of a draft Tribal Environmental Impact Report (“TEIR”) or have commented on the Project in writing to the Tribe or the City of Barstow.

**Sec. 2.17.** “Management Contractor” means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

**Sec. 2.18.** “MSA” means any Municipal Services Agreement between the Tribe and the City of Barstow, including any amendments thereto, entered into before this Compact takes effect. MSA, as defined herein, does not include any amendment to that agreement entered into after this Compact takes effect; provided that nothing herein is intended to limit the ability of the Tribe and the City of Barstow to amend the MSA.

**Sec. 2.19.** “Net Win” means the total amount wagered, less all prizes and payouts that are directly related to the amount wagered (as determined by GAAP) and any participation fees. Participation fees shall be defined as payments made to Gaming Resource Suppliers on a periodic basis by the Gaming Operation for the right to lease or otherwise license for play Gaming Devices that the Tribe does not own and are not generally available for outright purchase by gaming operators.

**Sec. 2.20.** “NIGC” means the National Indian Gaming Commission.

**Sec. 2.21.** “Project” is any activity occurring on Indian lands, a principal purpose of which is to serve the Tribe’s Gaming Activities or Gaming Operation, and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any other construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment. For purposes of this definition, section 11.0, and Exhibit A, "reservation" refers to the Tribe’s Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

**Sec. 2.22.** “Significant Effect(s) on the Off-Reservation Environment” is the same as “Significant Effect(s) on the Environment” and occur(s) if any of the following conditions exist:

- (i) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.
- (ii) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. As used herein, “cumulatively considerable” means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

- (iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, “reservation” refers to the Tribe’s Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

**Sec. 2.23.** “State” means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

**Sec. 2.24.** “State Gaming Agency” means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

**Sec. 2.25.** “State Designated Agency” means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

**Sec. 2.26.** “The Los Coyotes Band” means the Los Coyotes Band of Cahuilla and Cupeno Indians, a federally recognized Indian tribe.

**Sec. 2.27.** “Tribe” means the Big Lagoon Rancheria, a federally recognized Indian tribe listed in the Federal Register, or an authorized official or agency thereof.

**Sec. 2.28.** “Tribal Chairperson” means the person duly elected under the Tribe’s Constitution to perform the duties specified therein, including serving as the Tribe’s official representative.

**Sec. 2.29.** “Tribal Gaming Agency” means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe’s regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

**Sec. 2.30.** “25 Acre Parcel” means that certain parcel of land in the City of Barstow, California, together with all buildings, structures, parking areas, and other improvements thereon, as legally described in, and represented on the map at, Exhibit D hereto, or any lesser portion of said Parcel which is taken into trust for the benefit of the Tribe.

### **SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.**

#### **Sec. 3.1. Authorized and Permitted Class III Gaming.**

- (a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this Compact:
  - (1) Gaming Devices.
  - (2) Any banking or percentage card games.
  - (3) Any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the State are permitted to do so under state and federal law.
- (b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming; however, the Tribe agrees to count the number of any class II devices that it operates against the total number of Gaming Devices permitted under section 4.1.
- (c) Nothing herein shall be construed to authorize the operation of the game known as roulette, whether played with or on a mechanical, electro-mechanical, electrical, or video device, or any combination of such devices, or any game that incorporates the physical use of dice.
- (d) The Tribe shall not engage in any Class III Gaming that is not expressly authorized in this section.

**SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, AND REVENUE CONTRIBUTION.**

**Sec. 4.1. Authorized Number of Gaming Devices.** Subject to sections 3.1, subdivision (b), and 4.2, the Tribe is entitled to operate up to 2,250 Gaming Devices pursuant to the conditions set forth in section 4.3.3.

**Sec. 4.2. Authorized Gaming Facility.**

(a) In the event the Secretary of Interior makes the determination set forth in section 20(b)(1)(A) of IGRA that a Gaming Facility on the 25 Acre Parcel would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, the Governor anticipates concurring in that determination so long as both of the following have occurred:

(i) following two or more public meetings at which the subject of the Tribe's Gaming Facility has been on the agenda and discussed, the Barstow City Council has approved the Gaming Facility's location on the 25 Acre Parcel in the form of a resolution or other appropriate instrument, which may take the form of an MSA; and

(ii) a fair and scientific telephone survey of Barstow city residents, which meets the standards set forth in exhibit B hereto and which is conducted after May 1, 2005, or a more reliable polling of public sentiment, demonstrates public support for a Gaming Facility in the City of Barstow.

However, nothing herein shall be construed to authorize the conduct of Class III Gaming on the 25 Acre Parcel if the Governor fails to concur in a determination by the Secretary of Interior pursuant to section 20(b)(1)(A) of IGRA in connection with the 25 Acre Parcel. Further, any failure of the Tribe to comply with all terms set forth in the settlement agreement in the action referenced in section 4.3, subdivision (b), at any time after the execution of this Compact, shall be grounds for the Governor to refuse to concur in the determination of the Secretary of Interior.

(b) The Tribe may only engage in Class III Gaming on eligible Indian lands on the 25 Acre Parcel and agrees not to engage in Gaming Activities on its other Indian lands in California as set forth in section 4.3.

**Sec. 4.3. Tribe's Agreement to Forgo Gaming Activities**

(a) The Tribe agrees not to engage in, authorize, or permit Gaming Activities on any of its Indian lands in California, other than its Indian lands on the 25 Acre Parcel, and represents that, in the exercise of its sovereignty, it will not

engage in class II gaming activities other than on the 25 Acre Parcel during the term of this Compact.

(b) The Tribe shall comply with all terms set forth in the stipulation for entry of judgment, and judgment entered pursuant to that stipulation in the action in the U.S. District Court for the Northern District of California entitled *Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant*, case nos. C 97-4693 CW and C 99-4995 CW.

**Sec. 4.3.3. Revenue Contribution.**

(a) Subject to the deduction allowed under subdivision (c), the Tribe shall pay to the State the following percentages of its Net Win generated from the operation of Gaming Devices and banking and percentage card games:

<u>Annual Net Win</u>	<u>Percentage</u>
\$0-\$100 million	16%
Over \$100 million to \$200 million	20%
Over \$200 million	25%

The payment specified herein has been negotiated between the parties as a fair contribution, based upon the location of the Gaming Facility within the City of Barstow, its location for traffic on route to Las Vegas and other market conditions, the exclusivity provisions specified in section 4.4, and the Tribe's circumstances.

(b) (1) The Tribe shall remit to such agency, trust, fund, or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the payments referenced in subdivision (a) in quarterly payments. Said quarterly payments shall be based on the Net Win generated during that quarter from both Gaming Devices and banking and percentage card games, which payments shall be due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter). The specific percentage applied to the quarterly Net Win pursuant to subdivision (a) shall be determined by the cumulative total of the Net Win earned since the beginning of the calendar year. Thus, for instance, if the cumulative Net Win in the fourth calendar quarter exceeds \$100 million (but is less than \$200 million), the percentage

applied to the Net Win during that quarter would be 16% for the amounts earned in that quarter up to the cumulative \$100 million total and 20% for the amounts in excess of \$100 million.

(2) If the Gaming Activities authorized by this Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full calendar quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.

(3) All quarterly payments shall be accompanied by the certification specified in subdivision (d).

(c) The Tribe may deduct the following from the quarterly payments specified in subdivision (b):

(1) Payments made during the same calendar quarter by the Tribe pursuant to the MSA with the City of Barstow up to a total of \$500,000 quarterly.

(2) Payments made during the same calendar quarter by the Tribe (or an earlier calendar quarter if not yet deducted) pursuant to an intergovernmental agreement with the State Department of Transportation, or State Designated Agency, to mitigate off-reservation traffic impacts as specified in section 11.8.7, subdivision (c); provided, however, that each quarterly deduction cannot exceed 2.5% of the Tribe's quarterly Net Win from Gaming Devices and banking and percentage card games and provided, further, that the State can waive this quarterly limitation in whole or in part.

(d) The quarterly payments specified under subdivision (b) shall be accompanied by a certification (the "Quarterly Net Win Payment Report") that specifies the following:

(1) the Net Win calculation reflecting the quarterly Net Win from (i) the operation of Gaming Devices and (ii) banking and percentage card games;

(2) the percentage(s) applied to the quarterly Net Win pursuant to subdivision (a) (which percentage is determined by the

cumulative total of the Net Win earned since the beginning of the calendar year);

- (3) the deductions as specified in subdivision (c); and
- (4) the total amount of the quarterly payment paid to the State, after the deductions specified in subdivision (c).

The Quarterly Net Win Payment Report shall be prepared by the chief financial officer of the Gaming Operation and shall also be sent to the State Gaming Agency.

- (e) At any time after the fourth calendar quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the State Gaming Agency and the agency, trust, fund, or entity to which quarterly payments are made pursuant to subdivision (b) an audited financial statement for the Gaming Operation. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. The auditor used by the Tribe for this purpose shall be approved by the California Gambling Control Commission, or other State Designated Agency, but the State shall not unreasonably withhold its consent. If the audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount owing.
- (f) The State Gaming Agency may audit the Net Win calculations specified in subdivision (d)(1), as well as the deductions specified in subdivision (c), and if it determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide

a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of 1.0% per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not accept the difference but does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications are subject to section 8.4, subdivision (h).

- (g) Notwithstanding anything to the contrary in section 13, any failure of the Tribe to remit the payments referenced in subdivision (a) pursuant to subdivisions (b), (c), (d), (e) and (f) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of 1.0% per month, or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Compact.
- (h) This section constitutes a “section 4.3.1” within the meaning of article 6.5 (commencing with section 63048.6) of Chapter 2 of Division 1 of Title 6.7 of the California Government Code.

#### **Sec. 4.4. Tribal Exclusivity**

In recognition of the Tribe’s agreement to make the payments specified in section 4.3.3 and section 5.0, the Tribe shall have the following rights:

- (a) The Tribe shall be relieved of its obligation to make the payments specified in section 4.3.3 and section 5.2, if and only if the State authorizes either
  - (i) any person or entity, other than a federally recognized tribe with land in trust, or
  - (ii) a federally recognized tribe pursuant to an express concurrence under section 20(b)(1)(A) of IGRA (25 U.S.C. § 2719(b)(1)(A)), to engage in the Gaming Activities specified in subdivision (a)(1) of section 3.1 of the Compact, and said person, entity, or tribe engages in the Gaming Activities specified in subdivision (a)(1) of section 3.1 of the Compact within the Tribe's core geographic market, until such time that such gaming within the Tribe's

core geographic market ceases. Nothing herein is intended to preclude the State Lottery from offering any lottery games or devices that are authorized by the California Constitution as it exists as of July 1, 2004.

(b) The Tribe's core geographic market, as specified in subdivision (a), consists of the geographic area that is within a 40-mile radius of the Tribe's Gaming Facility.

(c) Notwithstanding subdivision (a), the operation of Gaming Activities specified in subdivision (a)(1) of section 3.1 within the Tribe's core geographic market by a federally recognized tribe pursuant to an express concurrence under section 20(b)(1)(A) of IGRA (25 U.S.C. § 2719(b)(1)(A)), whether or not the federally recognized tribe has land in trust at the time of the execution of any compact, does not relieve the Tribe of its obligation to make the payments specified in section 4.3.3 and section 5.2 if that federally recognized tribe (i) establishes a Gaming Facility on the site adjoining the 25 Acre Parcel, specifically, the site bearing assessors parcel numbers 0428-171-66, 67, or 68, or (ii) meets the following criteria: (A) the governing body of the local jurisdiction in which said tribe's Gaming Facility is proposed to be located approves by at least a two-thirds vote the establishment of such a Gaming Facility in the local jurisdiction, (B) the establishment of a Gaming Facility for the tribe within the local jurisdiction furthers an independent state public policy that is unrelated to the contribution of revenues to the State, such as preserving the environment in another location in which the tribe agrees to forego Class III Gaming in return for the express concurrence under section 20(b)(1)(A) of IGRA, (C) the tribe agrees to forego Class III Gaming on all of its other existing Indian lands within the State, and (D) the tribe agrees to make a revenue contribution to the State on terms equal or better than the revenue contribution contained in section 4.3.3.

(d) (1) Notwithstanding the Tribe's cessation of payments under section 4.3.3 and section 5.2, if the Tribe operates no more than 1,000 Gaming Devices throughout any calendar year, it shall nonetheless compensate the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance, or failing agreement on that amount, as determined by arbitration pursuant to section 13.2 of the Compact.

(2) Notwithstanding the Tribe's cessation of payments under section 4.3.3 and section 5.2, if the Tribe operates more than 1,000 Gaming Devices, it shall nonetheless pay 20% of the Net Win attributable to all Gaming Devices above 1,000 in quarterly payments to the agency, trust, fund, or entity, as the State Director of Finance, pursuant to law, shall specify to the Tribe in writing in accordance with subdivisions (d), (e), (f), (g), and (h) of section 4.3.3, but in no

event shall pay less than the actual and reasonable costs of regulation, as determined in subdivision (d)(1), if that amount is greater. For purposes of this subdivision, the Net Win attributable to all Gaming Devices above 1,000 shall be calculated by multiplying the average Net Win per Gaming Device for the quarter by the maximum number of Gaming Devices operated during that quarter in excess of 1,000.

**SECTION 5.0. REVENUE SHARING WITH A NON-GAMING TRIBE.**

**Sec. 5.1. Definitions.**

For purposes of this section, the following definitions apply:

(a) "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the California Gambling Control Commission, as trustee, with no duties or obligations except as set forth in this Compact, for the receipt, deposit, and distribution of monies paid pursuant to this section.

(b) A "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state compact, which has not engaged in, or offered, class II or Class III Gaming as of the date of distribution to the tribe from the Revenue Sharing Trust Fund or during the immediately preceding 365 days.

(c) A "Non-Compact Tribe" is a federally recognized tribe that has a compact with the State but is operating fewer than 350 Gaming Devices.

**Sec. 5.2. Revenue Sharing Trust Fund.**

(a) Commencing on January 1 of the sixth calendar year of the Tribe's Gaming Activities, the Tribe shall pay on a quarterly basis to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund the following annual fees in accordance with the following schedule:

<u>Year of the Tribe's Gaming Activities</u>	<u>Annual Payment</u>
Year 6	\$200,000
Year 7	\$300,000
Year 8	\$400,000
Year 9	\$500,000
Year 10	\$750,000
Year 11 and each succeeding year to December 31, 2025	\$1,500,000

- (b) Payments pursuant to subdivision (a) shall be accompanied by a written certification that sets forth the payment schedule in subdivision (a) and specifies the date on which the Tribe's Gaming Activities commenced, the calendar year of the present Gaming Activities, and the annual payment that applies to said year (of which the accompanying payment is for one quarter).
- (c) If the Tribe operates its Gaming Activities for at least two quarters during the first calendar year of its Gaming Activities, that year will be considered the first year of the Tribe's Gaming Activities for purposes of this section. Otherwise, the next calendar year of the Tribe's Gaming Activities will be considered the first year.
- (d) The gradual payment schedule in subdivision (a) is established in consideration of the Tribe's prior status as a non-gaming tribe and its needs as a result thereof, its agreement to share a market for its Gaming Facility, and its agreement to relinquish any right to revenue sharing payments for Non-Compact Tribes afforded under other tribal-state compacts once it commences its Gaming Operation.
- (e) The Tribe acknowledges that various compacts with the State provide for payments to the Revenue Sharing Trust Fund for the benefit of Non-Compact Tribes, which include Non-Gaming Tribes. Except as set forth in subdivision (d), nothing in this Compact affects the distribution of those payments. However, the payments made by the Tribe to the Revenue Sharing Trust Fund pursuant to this Compact shall be made only to Non-Gaming Tribes in equal shares with the objective of increasing the annual payment to those tribes.
- (f) The Tribe shall remit the payments referenced in subdivision (a) to the California Gambling Control Commission in quarterly payments, which payments shall be due thirty (30) days following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter).
- (g) The California Gambling Control Commission shall have no discretion with respect to the use or disbursement of the Revenue Sharing Trust Fund. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-

Gaming and other Non-Compact Tribes as specified in the tribal-state compacts. In no event shall the State's General Fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith, and Non-Compact Tribes and Non-Gaming Tribes are not third party beneficiaries of this Compact.

## **SECTION 6.0. LICENSING.**

### **Sec. 6.1. Gaming Ordinance and Regulations.**

- (a) All Gaming Activities conducted under this Compact shall, at a minimum, comply (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all rules, regulations, procedures, specifications, and standards duly adopted by the NIGC and the Tribal Gaming Agency, and (iii) the provisions of this Compact.
- (b) The Tribal Gaming Agency shall transmit a copy of the Tribal Gaming Ordinance, and all of its rules, regulations, procedures, specifications, or standards applicable to the Gaming Activities, to the California Gambling Control Commission within twenty (20) days following execution of this Compact, or within twenty (20) days following their adoption or amendment.
- (c) The Tribe and the Tribal Gaming Agency shall make available a copy of the following documents to any member of the public upon request: NIGC minimum internal control standards, the Tribal Gaming Ordinance, this Compact, the rules of each class III game operated by the Tribe, the tort ordinance specified in section 12.5, subdivision (b), and the regulations promulgated by the Tribal Gaming Agency concerning patron disputes.

### **Sec. 6.2. Tribal Ownership of Gaming Operation.**

The Gaming Operations authorized under this Compact shall be owned solely by the Tribe.

### **Sec. 6.3. Prohibitions Regarding Minors.**

- (a) The Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any room or area in which Gaming Activities are being conducted unless the person is en route to a non-gaming area of the Gaming Facility.
- (b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from purchasing, consuming, or possessing alcoholic beverages. The Tribe shall also prohibit persons under the age of 21 from being present in any room or area in which alcoholic beverages may be consumed, except to the extent permitted by the State Department of Alcoholic Beverage Control for other commercial establishments serving alcohol.

### **Sec. 6.4. Licensing Requirements and Procedures.**

#### **Sec. 6.4.1. Summary of Licensing Principles.**

All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Compact, including, but not limited to, all Gaming Employees, Gaming Resource Suppliers, Financial Sources, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal Gaming Agency and cannot have had a determination of suitability denied or revoked by the State Gaming Agency. The parties intend that the licensing process provided for in this Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

#### **Sec. 6.4.2. Gaming Facility.**

- (a) The Gaming Facility authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Compact, the Tribal Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every year thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State by sending a copy of the initial license and each renewal license to the California

Gambling Control Commission and any State Designated Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.

- (b) In order to assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall require the Gaming Facility, any expansion, improvement, modification, or maintenance of such Gaming Facility, and any other construction to meet or exceed the Applicable Codes; provided that the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. In order to determine compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall require inspections and, in connection therewith, shall contract with the City of Barstow to provide it with plan checkers, project inspectors, and public works personnel to conduct the inspections. The Tribe agrees to correct any Gaming Facility condition noted in said inspections that does not meet the Applicable Codes (hereinafter "deficiency"). The Tribe shall require all inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and the State Designated Agency. The plan checkers, project inspectors, and public works personnel shall hereinafter be referred to as "Inspector(s)."
- (c) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall arrange for the following:
  - (1) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the planned construction (the "Design and Building Plans") to be provided to the State Designated Agency within fifteen (15) days of their final plan check and approval;
  - (2) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, the Tribe shall provide such change orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval, and such changes shall be

reviewed by the Inspectors for compliance with the Applicable Codes;

- (3) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Designated Agency upon its request;
  - (4) The Tribe shall maintain the Design and Building Plans for the term of this Compact.
- (d) In all events, the State Designated Agency may designate an agent or agents, who shall be given not fewer than three (3) business days' notice of each inspection required by Section 108 of the California Building Code, and said State agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility deficiency noted in said inspection. Upon not fewer than three (3) business days' notice to the Tribal Gaming Agency, except in circumstances posing an immediate threat to the life or safety of any person, in which case no advance notice is required, the State Designated Agency shall also have the right to review all records of the Inspectors and conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however, that concurrent with any exercise by the State of its right to inspect without advance notice based upon alleged circumstances posing an immediate threat to the life or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.
- (e) Upon final certification by the Inspector that a Gaming Facility meets the Applicable Codes, the Tribal Gaming Agency shall forward the Inspector's certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.
- (f) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of the

Compact, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected. The Tribe shall not allow occupancy of any portion of a Gaming Facility that is constructed or maintained in a manner that endangers the health or safety of the occupants.

- (g) Nothing herein shall prohibit the Tribe and the City of Barstow from negotiating, or having negotiated, additional or more stringent standards in connection with any construction, modifications, or improvements on the 25 Acre Parcel.
- (h) The Tribe shall also take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and to reasonably ensure that the Gaming Facility satisfies all requirements of Title 19 of the California Code of Regulations applicable to similar facilities in the County as set forth below:
  - (1) Not less than thirty (30) days before the commencement of the Gaming Activities, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by fire prevention and safety personnel provided by the City of Barstow (hereinafter "the fire prevention expert") for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
  - (2) The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the fire prevention expert any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire and life safety.
  - (3) The fire prevention expert shall issue to the Tribal Gaming Agency and the State Designated Agency a report on the inspection within fifteen (15) days, identifying any deficiency in fire or life safety at the Gaming Facility or in the ability of

the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility.

- (4) Within fifteen (15) days after the issuance of the report, the fire prevention expert shall also require and approve a specific plan for correcting deficiencies, whether in fire or life safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State Designated Agency's representatives. A copy of the plan shall be served on the State Designated Agency and the Tribal Gaming Agency.
- (5) Immediately upon correction of all deficiencies identified in the report, the fire prevention expert shall certify in writing to the Tribal Gaming Agency and the State Designated Agency that all deficiencies have been corrected.
- (6) Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of the Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.

### **Sec. 6.4.3. Gaming Employees.**

- (a) Except as provided in subdivision (b), every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, and except as provided in subdivisions (b) and (c), shall obtain, and thereafter maintain current, a State Gaming Agency determination of suitability, which license and determination shall be subject to biennial renewal; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process and the State Gaming Agency determination of suitability.
- (b) Notwithstanding subdivision (a), an employee is not required to be licensed if (i) he or she is a Gaming Employee solely because he or

she is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public, and (ii) his or her employment is identified by an agreement between the State Gaming Agency and the Tribal Gaming Agency as not requiring licensure; provided:

- (1) The Gaming Employee's duties, and the areas and locations within the Gaming Facility in which they are permitted to be performed, shall be specified in the agreement, which shall prohibit the performance of employment duties in the portions of the Gaming Facility in which Gaming Activities are conducted, shall be subject to review and renewal by the State Gaming Agency and the Tribal Gaming Agency annually, and unless renewed shall expire one year following execution or the most recent renewal, whichever is later.
  - (2) The performance by any unlicensed Gaming Employee of any employment duties that are covered by the definition of Gaming Employee in a manner inconsistent with the above-referenced agreement, following expiration of the agreement, or in the absence of the agreement constitutes a material breach of this Compact.
- (c) A Gaming Employee who is required to obtain and maintain current a valid tribal gaming license under subdivision (a) is not required to obtain or maintain a State Gaming Agency determination of suitability if any of the following applies:
- (1) The employee is subject to the licensing requirement of subdivision (a) solely because he or she is a person who conducts, operates, maintains, repairs, or assists in Class III Gaming, provided that he or she does not supervise Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, *and* is not empowered to make discretionary decisions affecting the conduct of the Gaming Operation.
  - (2) The employee is subject to the licensing requirement of subdivision (a) solely because he or she is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public, provided that

he or she does not supervise Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, *and* is not empowered to make discretionary decisions affecting the conduct of the Gaming Operation.

- (3) If the State Gaming Agency, in consultation with the Tribal Gaming Agency, exempts the Gaming Employee from the requirement to obtain or maintain current a State Gaming Agency determination of suitability.
- (d) Notwithstanding subdivision (c), the State Gaming Agency is authorized to review the tribal gaming license application, and all materials and information received by the Tribal Gaming Agency in connection therewith, for any person whom the Tribal Gaming Agency has licensed, or proposes to license, as a Gaming Employee. If the State Gaming Agency determines that the person would be unsuitable for issuance of a license or permit for a similar level of employment in a gambling establishment subject to the jurisdiction of the State, it shall notify the Tribal Gaming Agency of that determination. Upon receipt of such notification, the Tribal Gaming Agency, in accordance with section 6.5.1, subdivision (d), shall deny that person a tribal gaming license and shall promptly revoke any tribal gaming license theretofore issued to that person, provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure.
- (e) The Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability or for a renewal of such a determination has been denied, or whose determination of suitability has expired without renewal.
- (f) At any time after five (5) years following the effective date of this Compact, either party to this Compact may request renegotiation of the scope of coverage of subdivision (c).
- (g) This section shall not apply to members of the Tribal Gaming Agency.

#### **Sec. 6.4.4. Gaming Resource Suppliers.**

- (a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Unless the Tribal Gaming Agency licenses the Gaming Resource Supplier pursuant to subdivision (d), the Gaming Resource Supplier shall also apply to, and the Tribe shall require it to apply to, the State Gaming Agency for a determination of suitability at least thirty (30) days prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, except that for Gaming Devices the period specified under section 7.1, subdivision (a), shall govern. The period during which a determination of suitability as a Gaming Resource Supplier is valid expires on the earlier of (i) the date two (2) years following the date on which the determination is issued, unless a different expiration date is specified by the State Gaming Agency, or (ii) the date of its revocation by the State Gaming Agency. If the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Gaming Resource Supplier to update all information provided in the previous application.
  
- (b) Any agreement between the Tribe and a Gaming Resource Supplier shall include a provision for its termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Gaming Resource Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. Except as set forth above, the Tribe shall not enter into, or continue to make payments to a Gaming Resource Supplier pursuant to, any contract or agreement for the provision of Gaming Resources with any person or entity whose application to the State Gaming Agency for a determination of

suitability has been denied or revoked or whose determination of suitability has expired without renewal.

- (c) Notwithstanding subdivision (a), the Tribal Gaming Agency may license a Management Contractor for a period of no more than seven (7) years, but said Management Contractor must still apply for renewal of a determination of suitability by the State Gaming Agency at least every two (2) years and where the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. Nothing in this subdivision shall be construed to bar the Tribal Gaming Agency from issuing additional new licenses to the same Management Contractor following the expiration of a seven (7) year license.
  
- (d) The Tribal Gaming Agency may elect to license a person or entity as a Gaming Resource Supplier without requiring it to apply to the State Gaming Agency for a determination of suitability under subdivision (a) if the Gaming Resource Supplier has already been issued a determination of suitability that is then valid. In that case, the Tribal Gaming Agency shall immediately notify the State Gaming Agency of its licensure of the person or entity as a Gaming Resource Supplier, and shall identify in its notification the State Gaming Agency determination of suitability on which the Tribal Gaming Agency has relied in proceeding under this subdivision (d). Subject to the Tribal Gaming Agency's compliance with the requirements of this subdivision, a Gaming Resource Supplier licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in the sale, lease, or distribution of Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. The issuance of a license under this subdivision is in all cases subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming Agency is valid. A license issued under this subdivision expires upon the revocation or expiration of the determination of suitability relied on by the Tribal Gaming Agency. Nothing in this subdivision affects the obligations of the Tribal Gaming Agency, or of the Gaming

Resource Supplier, under section 6.5.2 and section 6.5.6 of this Compact.

- (e) Except where subdivision (d) applies, within ten (10) days of the issuance of a license to a Gaming Resource Supplier, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license application materials and information received by it from the Applicant.

#### **Sec. 6.4.5. Financial Sources.**

- (a) Every Financial Source shall be licensed by the Tribal Gaming Agency prior to extending any financing in connection with the Tribe's Gaming Operation or Facility. Except as provided in subdivision (e)(4) or section 6.5.6, subdivision (i), every Financial Source shall also apply to, and the Tribe shall require it to apply to, the State Gaming Agency for a determination of suitability pursuant to the following timetable: (i) at least ninety (90) days prior to extending any financing in connection with the Tribe's Gaming Operation or Facility, provided that any Financial Source that applies for such a determination within ten (10) days of the effective date of this Compact is not in violation of this section; and (ii) in the event of a purchase or acceptance of an assignment or participation interest in any financing in connection with the Tribe's Gaming Operation or Facility, at least five (5) days prior to the Financial Source's purchase or acceptance of the assignment or participation interest. Where the State Gaming Agency denies the determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. In each instance where licensure or an application for a determination of suitability is required as set forth above, the license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application.
- (b) Any agreement between the Tribe and a Financial Source shall include a provision for its termination without further liability on the part of the Tribe, except for the payment of all bona fide obligations (including accrued interest) which remain unpaid as of the date of

termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. Except as provided above, the Tribe shall not enter into, or continue to make payments to a Financial Source pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.

- (c) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Gaming Resource Supplier may be licensed solely in accordance with the licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.
- (d) Within ten (10) days of the issuance of a license to a Financial Source, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license application materials and information received by it from the Applicant.
- (e)(1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section the following Financial Sources under the circumstances stated:
  - (A) Any federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lender and any fund or other investment vehicle which is administered or managed by any such entity.
  - (B) Any entity described in Regulation CGCC-2, subdivision (f) (as in effect on July 1, 2004) of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (e)(1)(A), or any fund or other investment

vehicle which is administered or managed by any such Financial Source, is the creditor.

- (C) Any investor who, alone or together with any persons controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation.
  - (D) Any agency of the federal, state or local government providing financing, together with any person purchasing any debt securities or other forms of indebtedness of the agency to provide such financing.
- (2) Except as provided in subdivision (e)(4), the Tribal Gaming Agency's exclusion of any Financial Source from the licensing requirements of this section does not relieve the Financial Source from the requirement of applying to the State Gaming Agency for a determination of suitability pursuant to subdivision (a).
- (3) In any case where the Tribal Gaming Agency elects to exclude a Financial Source from the licensing requirements of this section, the Tribal Gaming Agency shall give immediate notice thereof to the State Gaming Agency, shall give reasonable advance notice of any extension of financing by said Financial Source in connection with the Tribe's Gaming Operation or Facility, and upon request of the State Gaming Agency, shall provide it with all documentation supporting the Tribal Gaming Agency's exclusion of the Financial Source from the licensing requirements of this section.
- (4) (A) Where the Tribal Gaming Agency elects to exclude a Financial Source from the licensing requirements of this section, that Financial Source need not apply to the State Gaming Agency for a determination of suitability if:
- (i) It is a Financial Source specified in subdivision (e)(1)(A), or
  - (ii) It is a Financial Source specified in paragraph (2) or (3) of subdivision (f) of Regulation CGCC-2, which falls within the description of subdivision (e)(1)(B) of this section 6.4.5, and the California

Gambling Control Commission has by resolution found that the interest of the State does not require an application for a determination of suitability to be made by such Financial Source prior to the extension of financing covered by subdivision (e)(1)(B).

- (B) Notwithstanding subdivision (e)(4)(A), the State Gaming Agency continues to have the right to find the Financial Source unsuitable, and if the State Gaming Agency finds that an investigation of any Financial Source is warranted, the Financial Source shall be required to submit an application for a determination of suitability to the State Gaming Agency and shall pay the costs and charges incurred in the investigation and processing of the application, in accordance with the provisions set forth in Business and Professions Code sections 19867 and 19951.
- (5) In the event that any Financial Source excluded from the licensing requirements of this section is found unsuitable by the State Gaming Agency, the Tribe must not enter into, or continue to make payments (except for payment of all bona fide obligations (including accrued interest) which remain unpaid as of the date of the finding of unsuitability) to said Financial Source pursuant to, any contract or agreement for the provision of financing.
- (6) The following are not Financial Sources for purposes of this section:
  - (A) An entity identified by Regulation CGCC-2, subdivision (h) (as in effect on July 1, 2004) of the California Gambling Control Commission.
  - (B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

- (f) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by both parties in or after five (5) years from the effective date of this Compact upon the request of either party; provided such renegotiation shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

**Sec. 6.4.6. Processing Tribal Gaming License Applications.**

- (a) Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency.
- (b) At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.
- (c) For Applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or gaming authorized under this Compact, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12) month period. For purposes of this subdivision, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity.
- (d) Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

#### **Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.**

- (a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations are free from criminal and dishonest elements and would be conducted honestly.
- (b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the Applicant, and in the case of an entity, each individual identified in section 6.4.6, meets all the following requirements:
  - (1) The person is of good character, honesty, and integrity.
  - (2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, or in the carrying on of business and financial arrangements incidental thereto.
  - (3) The person is in all other respects qualified to be licensed as provided, and meets the criteria established in this Compact, IGRA, NIGC regulations, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe; provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of a tribal gaming operation in California that was conducted prior to May 16, 2000.

#### **Sec. 6.4.8. Background Investigations of Applicants.**

- (a) The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in section 6.4.7, and to fulfill all requirements for licensing under IGRA, NIGC regulations, the Tribal Gaming

Ordinance, and this Compact. The Tribal Gaming Agency shall not issue other than a temporary license pursuant to section 6.4.9 until a determination is made that those qualifications have been met.

- (b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously issued under a Class III Gaming compact involving another tribe and the State, or may rely on a State Gaming Agency license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.
- (c) An Applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the Applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate state or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.
- (d) If the Tribe adopts an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Agency may be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. In that case, the California Department of Justice shall provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

#### **Sec. 6.4.9. Temporary Licensing of Gaming Employees.**

- (a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the Applicant is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine.
- (b) Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary tribal gaming license.
- (c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination is made on the application.
- (d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Agency shall or may, as the case may be, suspend or revoke it in accordance with the provisions of sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation before making a determination of unsuitability.
- (e) Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

#### **Sec. 6.5.0. Tribal Gaming License Issuance.**

Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both

of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

**Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.**

- (a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.
- (b) Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with section 6.5.5.
- (c) All rights to notice and hearing shall be governed by tribal law and comport with federal procedural due process. The Applicant shall be notified in writing of the hearing and given notice of any intent to suspend or revoke the tribal gaming license.
- (d) Notwithstanding anything to the contrary herein, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure.

**Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.**

- (a) Except as provided in section 6.4.4, subdivision (c), the term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material, as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or which is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an

additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the Applicant's continuing suitability or eligibility for a license.

- (b) Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal of the tribal gaming license for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.
- (c) At the discretion of the State Gaming Agency, an additional background investigation may be required if the State Gaming Agency determines the need for further information concerning the Applicant's continuing suitability for a license.

#### **Sec. 6.5.3. Identification Cards.**

- (a) The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at chest height at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency.
- (b) Identification badges must display information, including, but not limited to, a photograph and the person's name, which is adequate to enable members of the public and agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.
- (c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number (if any), and job title of all Gaming Employees.

#### **Sec. 6.5.4. Fees for Tribal License.**

The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

### **Sec. 6.5.5. Suspension of Tribal Gaming License.**

The Tribal Gaming Agency shall summarily suspend the tribal gaming license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person could constitute a threat to the public health or safety or may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by tribal law and comport with federal procedural due process.

### **Sec. 6.5.6. State Determination of Suitability Process.**

- (a) The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal Gaming Employee license applications, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof. To facilitate the State Gaming Agency's ability to obtain any criminal information that may relate to the Applicant, each application form shall be printed showing the State Gaming Agency's approval of its use, but said approval shall not be unreasonably withheld.
- (b) With respect to Gaming Employees, upon receipt of an Applicant's completed license application and a determination to issue either a temporary or permanent license, the Tribal Gaming Agency shall transmit within ten (10) days to the State Gaming Agency for a determination of suitability for licensure under the California Gambling Control Act a notice of intent to license the Applicant, together with all of the following:
  - (1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant.
  - (2) A complete set of fingerprint impressions, rolled by a certified fingerprint roller, transmitted electronically.
  - (3) A current photograph.

- (4) Except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency.
- (c) Upon receipt of a written request from a Gaming Resource Supplier or a Financial Source for a determination of suitability, the State Gaming Agency shall transmit an application package to the Applicant to be completed and returned to the State Gaming Agency for purposes of allowing it to make a determination of suitability for licensure.
- (d) Investigation and disposition of applications for a determination of suitability shall be governed entirely by state law, and the State Gaming Agency shall determine whether the Applicant would be found suitable for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, to the extent permitted under state law for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction.
- (e) The Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license.
- (f) Upon receipt of completed license or license renewal application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the Applicant is suitable to be licensed for association with Class III Gaming operations. While the Tribal Gaming Agency shall ordinarily be the primary source of application information, the State Gaming Agency is authorized to directly seek application information from the Applicant. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the Applicant will be required to pay the application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951, subdivision (a), but any deposit requested by the State Gaming Agency pursuant to section 19867 of that Code shall take into account reports of the background

investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to provide information reasonably required by the State Gaming Agency to complete its investigation under State law or failure to pay the application fee or deposit can constitute grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs.

- (g) Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the Applicant is suitable, or that the Applicant is unsuitable, for licensure in a Gaming Operation and, if unsuitable, stating the reasons therefor. Issuance of a determination of suitability does not preclude the State Gaming Agency from a subsequent determination based on newly discovered information that a person or entity is unsuitable for the purpose for which the person or entity is licensed. Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, the Tribal Gaming Agency shall deny that person or entity a license and promptly revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to Section 1085 of the California Code of Civil Procedure.
- (h) Prior to denying an application for a determination of suitability, or to issuing notice to the Tribal Gaming Agency that a person or entity previously determined to be suitable had been determined unsuitable for licensure, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, or issues notice that a person or entity previously determined suitable has been determined unsuitable for licensure, the State Gaming Agency shall provide that person or entity with written notice of all appeal rights available under state law.

- (i) The California Gambling Control Commission (“Commission”), or its successor, shall maintain a roster of Gaming Resource Suppliers and Financial Sources that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the Commission. Upon application to the Tribe for a tribal gaming license, a Gaming Resource Supplier or Financial Source that appears on the Commission’s suitability roster may be licensed by the Tribal Gaming Agency in the same manner as a Gaming Resource Supplier under subdivision (d) of Section 6.4.4, subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier or Financial Source is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1; provided that nothing in this subdivision exempts the Gaming Resource Supplier or Financial Source from applying for a renewal of a State determination of suitability.

## **SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.**

### **Sec. 7.1. Gaming Device Approval.**

No Gaming Device may be offered for play unless all the following occurs:

- (a) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (i) has applied for a determination of suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (ii) has not been found to be unsuitable by the State Gaming Agency, and (iii) has been licensed by the Tribal Gaming Agency;
- (b) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or state governmental gaming test laboratory (the “Gaming Test Laboratory”) as operating in accordance with the standards of Gaming Laboratories International, Inc. known as GLI-11 and GLI-12, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld;
- (c) A copy of the certification by the Gaming Test Laboratory, specified in subdivision (b) above, is provided to the State Gaming Agency by

electronic transmission or by mail, unless the State Gaming Agency waives receipt of copies of the certification;

- (d) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device; and
- (e) The hardware and associated equipment for the Gaming Device has been tested by the Gaming Test Laboratory to ensure operation in accordance with the manufacturer's specifications.

### **Sec. 7.2. Gaming Test Laboratory Selection.**

The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein at least thirty (30) days before the commencement of Gaming Activities pursuant to this Compact, or if such use follows the commencement of Gaming Activities, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of such Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that such Gaming Test Laboratory discontinues its responsibilities under this section.

### **Sec. 7.3. Independent Audits.**

The Tribal Gaming Agency shall ensure that compliance with section 7.1 is audited annually by an independent auditor and shall provide the results of such audits to the State Gaming Agency within five (5) business days of completion. For purposes of this section, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, has no financial interest in any of these entities, and is only otherwise retained by any

of these entities to conduct regulatory audits, independent audits of the Gaming Operation, or audits under this section.

#### **Sec. 7.4. State Gaming Agency Inspections.**

- (a) The State Gaming Agency, utilizing such consultants, if any, deemed appropriate, may inspect the Gaming Devices in operation at the Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to the manufacturer's technical standards. Said random inspections conducted pursuant to this subdivision shall occur during normal business hours from 7 a.m. to 5 p.m. outside of Fridays, weekends, and holidays and shall not remove from play more than 5% of the Gaming Devices operating at the Gaming Facility.
- (b) The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection at or prior to the commencement of the random inspection, and the Tribal Gaming Agency may accompany the State Gaming Agency inspector(s).
- (c) The State Gaming Agency, utilizing such consultants, if any, deemed appropriate, may conduct additional inspections at additional times upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.
- (d) The Tribe and the State Gaming Agency shall inform the Gaming Test Laboratory in writing that irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State and the Tribe.

#### **Sec. 7.5. Technical Standards.**

The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices at least thirty (30) days before the commencement of the Gaming Operation and at least thirty (30) days before the effective date of any revisions to the regulations.

### **Sec. 7.6. State Gaming Agency Designation.**

For purposes of sections 7.1 to 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the Governor provides otherwise by written notice pursuant to section 16.

### **Sec. 7.7. Transportation of Gaming Devices.**

- (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriff's Department for the County.
- (b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:
  - (1) The final destination of the Gaming Device is a gaming facility of any tribe in California that has a compact with the State which makes lawful the receipt of such Gaming Device;
  - (2) The final destination of the Gaming Device is any other state in which possession of the Gaming Devices is made lawful by state law or by tribal-state compact;
  - (3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of the Gaming Device is lawful; or
  - (4) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.
- (c) Any Gaming Device transported from or to the Tribe's land in violation of this section 7.7, or in violation of any permit issued pursuant thereto, is subject to summary seizure by California peace officers.

## **SECTION. 8.0. INSPECTIONS.**

### **Sec. 8.1. Investigation and Sanctions.**

- (a) The Tribal Gaming Agency shall investigate any reported violation of this Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary.
- (b) The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, NIGC gaming regulations, the Tribal Gaming Ordinance, or this Compact as long as said fines or sanctions comport with federal due process.
- (c) The Tribal Gaming Agency shall report violations of this Compact and any failures to comply with its orders to the California Gambling Control Commission and the Division of Gambling Control in the California Department of Justice within ten (10) days of discovery.

### **Sec. 8.2. Assistance by State Gaming Agency.**

The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in section 8.1, or otherwise to protect public health, safety, or welfare.

### **Sec. 8.3. Access to Premises by State Gaming Agency; Notification; Inspections.**

- (a) Notwithstanding that the Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency, including but not limited to any consultants retained by it, shall have the right to inspect the Tribe's Gaming Facility, and all Gaming Operation or Facility records relating to Class III Gaming, including such records located in off-site facilities dedicated to their storage subject to the conditions in subdivisions (b), (c), and (d).

- (b) Except as provided in section 7.4, the State Gaming Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours (8:00 a.m. to 5:00 p.m.).
- (c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time the Gaming Facility is open to the public, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility.
- (d) Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

**Sec. 8.4. Inspection, Copying and Confidentiality of Documents.**

- (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after the State Gaming Agency gives notice to the Tribal Gaming Agency, during the hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, and at any other time that a Tribal Gaming Agency employee, a Gaming Facility employee, or a Gaming Operation employee is available onsite with physical access to offices, including off-site facilities, where the papers, books, and records are kept. The Tribe shall cooperate with, and cannot refuse, said inspection and copying, provided that the State Gaming Agency inspectors cannot require copies of papers, books, or records in such volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Facility.
- (b) In lieu of onsite inspection and copying of Gaming Operation papers, books, and records by its inspectors, the State Gaming Agency may request in writing that the Tribal Gaming Agency provide copies of such papers, books, and records as the State Gaming Agency deems

necessary to ensure compliance with the terms of this Compact. The State Gaming Agency's written request shall describe those papers, books, and records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the State Gaming Agency may agree in writing, the Tribal Gaming Agency shall provide one copy of the requested papers, books, and records to the requesting State Gaming Agency. An electronic version of the requested papers, books, and records may be submitted to the State Gaming Agency in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the State Gaming Agency and the State Gaming Agency does not object.

- (c) Notwithstanding any other provision of California law, any confidential information and records, as defined in subdivision (d), that the State Gaming Agency obtains or copies pursuant to this Compact shall be, and remain, the property solely of the Tribe; provided that such confidential records and copies may be retained by the State Gaming Agency as is reasonably necessary to assure the Tribe's compliance with this Compact or to complete any investigation of suspected criminal activity; and provided further that the State Gaming Agency may provide such confidential records and copies to federal law enforcement and other state agencies or consultants that the State deems reasonably necessary in order to assure the Tribe's compliance with this Compact, in order to renegotiate any provision thereof, or in order to conduct or complete any investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.
- (d) "Confidential information and records" means information and records treated as confidential or protected from disclosure under California state law, including, but not limited to, trade secrets, non-public financial data, player tracking data, internal controls, and internal reports related to security and prevention of theft. The Tribe shall designate as confidential each page of each record it believes to be confidential under California state law, and in all such cases the State shall treat the record as confidential until such time that the designation is removed. If the State objects to such designation with respect to any record or page(s) of a record, the matter will be resolved in accordance with the arbitration procedures under section

13.2. The State need not treat as confidential any page or record not so designated.

- (e) The State Gaming Agency and all other state agencies and consultants to which it provides information and records obtained pursuant to subdivisions (a) or (b) of this section, which are deemed confidential pursuant to subdivision (d), will exercise care in the preservation of the confidentiality of such information and records and will apply the highest standards of confidentiality provided under California state law to preserve such information and records from disclosure until such time as the confidential designation may be removed by the Tribe, by mutual agreement, or pursuant to the arbitration procedures under section 13.2. Before the State Gaming Agency provides confidential information or records to a consultant as authorized under subdivision (c), it shall enter a confidentiality agreement with that consultant that meets the standards of this subdivision.
- (f) The Tribe may avail itself of any and all remedies under state law for the improper disclosure of confidential information or records. In the case of any disclosure of confidential information or records compelled by judicial process, the State Gaming Agency will endeavor to give the Tribe prompt notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.
- (g) The Tribal Gaming Agency and the State Gaming Agency shall confer regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.
- (h) Confidential records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those confidential records, shall be exempt from disclosure under the California Public Records Act.
- (i) Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact or to conduct or complete an investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.

**SEC. 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.**

**Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.**

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Compact, of IGRA, of NIGC gaming regulations, and of the Tribal Gaming Ordinance, to protect the integrity of the Gaming Activities and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

- (a) The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the conduct of investigations and hearings with respect thereto, and to any other subject within its jurisdiction.
- (b) The physical safety of Gaming Facility patrons and employees, and any other person while in the Gaming Facility. Except as provided in Section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.
- (c) The physical safeguarding of assets transported to, within, and from the Gaming Facility.
- (d) The prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided in subdivision (e).
- (e) Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and

may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times.

- (f) The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter “incidents”). The regulations shall provide that the Tribal Gaming Agency shall transmit copies of incident reports to the State Gaming Agency forthwith. The procedure for recording incidents pursuant to said regulations shall also do all of the following:
  - (1) Specify that security personnel record all incidents, regardless of an employee’s determination that the incident may be immaterial (all incidents shall be identified in writing).
  - (2) Require the assignment of a sequential number to each report.
  - (3) Provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page.
  - (4) Require that each report include, at a minimum, all of the following:
    - (A) The record number.
    - (B) The date.
    - (C) The time.
    - (D) The location of the incident.
    - (E) A detailed description of the incident.
    - (F) The persons involved in the incident.
    - (G) The security department employee assigned to the incident.
- (g) The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.
- (h) Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming

Activities of the Tribe or to the integrity of regulated gaming within the State. The Tribal Gaming Agency shall transmit a copy of the list to the State Gaming Agency quarterly and shall make a copy of the current list available to the State Gaming Agency upon request. Notwithstanding anything in this Compact to the contrary, the State Gaming Agency is authorized to make the copies of the list available to other Tribal Gaming Agencies, to licensees of the California Gambling Control Commission, the California Horse Racing Board, and other law enforcement agencies.

- (i) The conduct of an audit, at the Tribe's expense, of the annual financial statements of the Tribe's Gaming Activities.
- (j) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.
- (k) The obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.
- (l) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to ensure that betting limits applicable to any gaming station is displayed at that gaming station.
- (m) Maintenance of a cashier's cage in accordance with industry standards for such facilities.
- (n) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.
- (o) Technical standards and specifications in conformity with the requirements of this Compact for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe.

## **Sec. 9.2. Program to Mitigate Problem Gambling.**

The Tribal Gaming Agency shall establish a program to mitigate pathological and problem gambling by implementing the following measures:

- (a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.
- (b) It shall make available to patrons at conspicuous locations and ATM's in the Gaming Facility educational and informational materials which aim at the prevention of problem gambling and which specify where to find assistance.
- (c) It shall establish self-exclusion programs whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the Gaming Facility.
- (d) It shall establish an involuntary exclusion program that allows the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and cash checking services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.
- (e) It shall display at conspicuous locations and at ATM's within the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.
- (f) It shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place.
- (g) It shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that the advertising and marketing make no false or misleading claims.

- (h) It shall adopt a code of conduct, derived, inter alia, from that of the American Gaming Association, that addresses responsible gambling and responsible advertising.

Nothing herein is intended to grant any third party the right to sue based on a claimed violation of these standards.

### **Sec. 9.3. Enforcement of Regulations.**

The Tribal Gaming Agency shall ensure the enforcement of the rules, regulations, and specifications promulgated under this Compact, including under section 9.1.

### **Sec. 9.4. State Civil and Criminal Jurisdiction.**

Nothing in this Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all state and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the State's criminal laws within the 25 Acre Parcel, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by state and local law enforcement agencies and state courts elsewhere in the State, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The Tribe hereby consents to such criminal jurisdiction. However, no Gaming Activity conducted by the Tribe pursuant to this Compact may be deemed to be a criminal violation of any law of the State. Except for such Gaming Activity conducted pursuant to this Compact, criminal jurisdiction to enforce state gambling laws on the Tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d).

### **Sec. 9.5. Tribal Gaming Agency Members.**

- (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end and shall ensure its enforcement; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have

acted in a corrupt or compromised manner or to have a conflict of interest.

- (b) The Tribe shall conduct a background investigation on each prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the member has been found to be suitable. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the Tribal Gaming Agency.
- (c) In the event that the State Gaming Agency determines that a member of the Tribal Gaming Agency is unsuitable, the State Gaming Agency shall serve upon the Tribe a written notice of its finding of unsuitability and request the removal of the member. Upon receipt of notice that the State Gaming Agency has determined the member to be unsuitable, the Tribe shall either remove that member from the Tribal Gaming Agency or demand an expedited arbitration pursuant to section 13.2.
- (d) If the Tribe demands an expedited arbitration of the State's determination of unsuitability, the arbitrator shall make a de novo determination as to whether the State Gaming Agency's determination of unsuitability is justified using the following bases for such determination.
  - (1) To be found suitable, the member must be all of the following:
    - (A) A person of good character, honesty, and integrity.
    - (B) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of

controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(C) A person that is in all other respects qualified to be licensed as provided in section 6.4.7 of this Compact.

(2) A member is deemed unsuitable if any of the following apply:

(A) The person, any partner, or any officer, director, or shareholder of any corporation in which the person has a controlling interest, has any financial interest in any business or organization that is engaged in any form of gambling prohibited by section 330 of the California Penal Code, whether within or without the State of California.

(B) The person fails to clearly establish eligibility and qualification in accordance with section 6.4.7 of this Compact.

(C) The person fails to provide information, documentation, and assurances required by sections 6.4.7, 6.4.8, subdivision (c), or 6.5.6 of this Compact or requested by the Tribal Gaming Agency, or fails to reveal any fact material to qualification, or supplies information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(D) The person has been convicted of a felony, including a conviction by a federal court or by a court in another state for a crime that would constitute a felony if committed in California.

(E) The person has been convicted of any misdemeanor involving dishonesty or moral turpitude within the ten (10) year period immediately preceding the beginning of his or her service on the Tribal Gaming Agency, unless the applicant has been granted relief pursuant to section 1203.4, 1203.4a, or 1203.45 of the California Penal Code; provided, however, that the granting of relief pursuant to section 1203.4, 1203.4a, or 1203.45 of the

California Penal Code shall not constitute a limitation on the discretion of the arbitrator to determine the person's compliance with the requirements of sections 6.4.7 and 9.5, subdivision (d)(1), of this Compact.

- (F) The person has been associated with criminal profiteering activity or organized crime, as defined by section 186.2 of the California Penal Code.
- (G) The person has exhibited contumacious defiance of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling, official corruption related to gambling activities, or criminal profiteering activity or organized crime, as defined by section 186.2 of the California Penal Code.
- (H) The person is less than twenty-one (21) years of age.

In all cases, in coming to a decision, the arbitrator must give due consideration for the proper protection of the health, safety and welfare of the residents of the State, and must take into account whether membership on the Tribal Gaming Agency would undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.

#### **Sec. 9.6. State Gaming Agency Regulations.**

- (a) Pursuant to the procedures set forth in section 9.7, the State Gaming Agency may adopt regulations governing matters encompassed in sections 6.0, 7.0, and 9.1 under the following circumstances:
  - (1) The State Gaming Agency may adopt regulations that apply to any aspect of the Gaming Operation that is not addressed by a regulation of the Tribal Gaming Agency, as long as the regulations are not inconsistent with the terms of this Compact.
  - (2) The State Gaming Agency may adopt regulations that apply to any subjects covered by sections 6.0, 7.0, and 9.1 when it deems that the regulations adopted by the Tribal Gaming Agency in connection with said subject are ineffective in

addressing it, as long as they are not inconsistent with the terms of this Compact.

- (3) In circumstances that present an imminent threat to public health or safety, the State Gaming Agency may adopt a regulation that becomes effective immediately, regardless of whether the Tribe or Tribal Gaming Agency has enacted a regulation on the subject and regardless of whether the tribal regulation is deemed ineffective. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Tribal Gaming Agency. A regulation adopted by the State Gaming Agency pursuant to this subdivision shall be subject to the provisions governing arbitration under subdivision (d) of section 9.7.
- (b) Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency under this section.

**Sec. 9.7. Limitations on Adoption of State Gaming Regulations.**

- (a) To promote respectful relations between the Tribe and the State, except as provided in section 9.6, subdivision (a)(3), no regulation of the State Gaming Agency adopted under section 9.6, subdivisions (a)(1) and (2), shall be effective with respect to the Tribe's Gaming Operation until all of the following procedures have been exhausted:
  - (1) When the State Gaming Agency suspects, with respect to an aspect of the Gaming Operation that no such regulation exists, or that an existing regulation is ineffective in addressing a subject, it may so notify the Tribal Gaming Agency, set forth the reasons for its position, and request a meeting for the purpose of considering the adoption of a regulation by the Tribal Gaming Agency or the State Gaming Agency. The notification shall propose a date for the meeting, which shall not be less than ten (10) days following the date the notification is made.
  - (2) Representatives of the Tribal Gaming Agency shall meet with the representatives of the State Gaming Agency (for purposes

of this section, the “parties”) on the date proposed in the notification, or such other date as may be mutually agreed. In the absence of agreement upon a different date, the date proposed in the notification shall control. The parties at the meeting shall confer in good faith over the necessity for the adoption of a regulation and ways in which effective regulation may be achieved. Any proposal of a regulation by the Tribal Gaming Agency, either at or prior to the meeting, shall be without prejudice to its right to dispute either the necessity of a regulation or the effectiveness of a regulation in existence.

- (3) Within thirty (30) days following the meeting, the Tribal Gaming Agency may propose a regulation for the purpose of addressing the subject as to which the State Gaming Agency provided notification. The Tribal Gaming Agency may adopt the regulation only after inviting comment or objection by the State Gaming Agency, and the Tribal Gaming Agency must provide at least thirty (30) days for the State Gaming Agency to comment or object by providing a copy of the proposed regulation to the State Gaming Agency at least thirty (30) days prior to the date of its intended adoption. Prior to adoption of any regulation under this paragraph, the Tribal Gaming Agency shall respond in writing to each comment and objection of the State Gaming Agency.
  - (4) If the Tribal Gaming Agency adopts a regulation as provided in subdivision (a)(3), the State Gaming Agency may, if dissatisfied with the regulation, make a demand for binding arbitration upon the Tribal Gaming Agency, in which case arbitration shall proceed as provided in subdivision (d).
- (b) If the Tribal Gaming Agency does not propose a regulation within thirty (30) days following the meeting specified in subdivision (a)(2) and adopt a regulation as provided in subdivision (a)(3) within seventy (70) days of the meeting specified in subdivision (a)(2), the State Gaming Agency may adopt a regulation for the purpose of addressing the subject as to which it provided the Tribal Gaming Agency notification pursuant to subdivision (a)(1). Except as provided in section 9.6, subdivision (a)(3), the State Gaming Agency shall adopt no regulation under this subdivision without first providing the proposed regulation to, and inviting comment or

objection by, the Tribal Gaming Agency at least thirty (30) days prior to the date of the intended adoption of the regulation. The Tribal Gaming Agency shall provide its comments or objections, if any, to the State Gaming Agency at least ten (10) days prior to the date of the intended adoption of the regulation. Prior to adoption of any regulation under this subdivision, the State Gaming Agency shall respond in writing to each comment and objection of the Tribal Gaming Agency.

- (c) If the State Gaming Agency adopts a regulation as provided in subdivision (b), the Tribal Gaming Agency may, if dissatisfied with the regulation, make a demand upon the State Gaming Agency for binding arbitration, in which case the arbitration shall proceed as provided in subdivision (d).
- (d) Neither a demand for arbitration nor the pendency of arbitration shall impair the effect of a regulation adopted by the Tribal Gaming Agency under subdivision (a)(3) or by the State Gaming Agency under subdivision (b) of this section or subdivision (a)(3) of section 9.6. Arbitration, when demanded, shall proceed before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Each party shall exchange with the other within fifteen (15) days of the demand for arbitration a single proposal in the form of a regulation that the party proposes to adopt. If either party has adopted a regulation pursuant to subdivisions (a) or (b) of this section or subdivision (a)(3) of section 9.6, that regulation shall constitute the proposal of that party. The arbitrator shall be limited to determining whether the Compact authorizes a regulation to be adopted with respect to the aspect of the Gaming Operation at issue, and if so, which of the proposals before the arbitrator most effectively addresses the subject in light of the purposes and objectives of sections 6.0, 7.0, and 9.1 of this Compact. Unless the arbitrator determines that no regulation is required by the Compact, the arbitrator shall issue an order, effective upon issuance, which shall identify which of the two (2) proposals is to be given effect as a regulation. If requested by a party at the hearing, a reasoned statement of the arbitrator's decision shall be included in the order. Review of the arbitrator's order is waived. In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive, and does hereby waive, its right to assert sovereign immunity in connection with the arbitrator's jurisdiction

and in any action to (i) enforce the other party's obligation to arbitrate, or (ii) enforce or confirm any arbitral order rendered in the arbitration.

- (e) The proposal identified by the arbitrator's order as the proposal to be given effect shall be effective as follows: If the proposal so identified is in effect on the date the arbitrator's order is issued, it need not be readopted and shall be effective from the date of adoption. If the proposal so identified is not in effect on the date the arbitrator's order is issued, it shall be adopted as a regulation by the party that proposed it not earlier than thirty (30) days after the date of the arbitrator's order. Any proposal adopted as a regulation pursuant to sections 9.6 and 9.7 prior to the arbitrator's order, which is not adopted by the arbitrator pursuant to subdivision (d), shall cease to be effective upon adoption of the proposal identified by the arbitrator's order.
- (f) Nothing in this section 9.7 shall be deemed to preclude either the State or the Tribe from seeking, under section 13.1, a resolution of the question whether a regulation adopted under section 9.0 conflicts with a final published regulation of the NIGC.

## **SECTION 10.0. PATRON DISPUTES.**

The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play or operation of any game, including any refusal to pay to a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

- (a) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within seven (7) days of said play or operation shall be notified in writing of his or her right to request, within fifteen (15) days of said written notification, resolution of the dispute by the Tribal Gaming Agency, and if dissatisfied with the resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subdivision (c). If the patron is not provided with the aforesaid notification within thirty (30) days of the patron's complaint, the deadlines herein shall be removed, leaving only the relevant statutes of limitations under California law that would otherwise apply.

- (b) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an appropriate investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice extant in Nevada and New Jersey. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.
- (c) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that the dispute be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). Upon such request, the Tribe shall consent to such arbitration, and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure. To effectuate its consent to said arbitration, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the Tribe's or the patron's (for purposes of this section, the "parties") obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award. The cost and expenses of such arbitration shall be initially borne by the Tribe, but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at that party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all the costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome.

**SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL AND ECONOMIC IMPACTS.**

**Section 11.8.1. Tribal Environmental Impact Report.**

- (a) Before the commencement of any Project as defined in section 2.21 herein, the Tribe shall cause to be prepared a tribal environmental impact report, which is hereinafter referred to as a TEIR, analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this section 11.0; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in said TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off-Reservation Environment which the Project is likely to have, including each of the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:
- (1) All Significant Effects on the Environment of the proposed Project;
  - (2) In a separate section:
    - (A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;
    - (B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;
  - (3) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;

- (4) Alternatives to the Project; provided that the Tribe need not address alternatives that would require it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands;
  - (5) Whether any proposed mitigation would be feasible;
  - (6) Any direct growth-inducing impacts of the Project; and
  - (7) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.
- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each shall be discussed and the basis for selecting a particular measure shall be identified. Formulation of mitigation measures shall not be deferred until some future time. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would require it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Environment with proposed measures and alternatives that would reduce or avoid that effect, and

issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The Tribe shall consider any recommendations from the City of Barstow concerning the person or entity to prepare the TEIR.

**Section 11.8.2. Notice of Preparation of Draft TEIR.**

- (a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research (“State Clearinghouse”), the City of Barstow, and the County for distribution to the public. The Notice shall provide all Interested Persons, as defined in section 2.16, with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:
  - (1) A description of the Project;
  - (2) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and
  - (3) The probable off-reservation environmental effects of the Project.
- (b) The Notice shall also inform Interested Persons of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the Notice by the State Clearinghouse and the City of Barstow. The Notice shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

**Section 11.8.3. Notice of Completion of the Draft TEIR.**

- (a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse and the City of Barstow, the

Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the State Gaming Agency, the County, the City of Barstow, and the California Department of Justice. The Notice of Completion shall include all of the following information:

- (1) A brief description of the Project;
  - (2) The proposed location of the Project;
  - (3) An address where copies of the draft TEIR are available; and
  - (4) Notice of a period of forty-five (45) days during which the Tribe will receive comments on the draft TEIR.
- (b) The Tribe will submit ten (10) copies each of the draft TEIR and Notice of Completion to the City of Barstow, which will be asked to post public notice of the draft TEIR at the City Council and the public libraries serving the City of Barstow, and to the County, which will be asked to post public notice of the draft TEIR at the County Board of Supervisors and public libraries within 50 miles of the City of Barstow. The City of Barstow shall also be asked to serve in a timely manner the Notice of Completion to all Interested Persons, which Interested Persons shall be identified by the Tribe for the City, to the extent it can identify them. In addition, the Tribe will provide public notice by at least one of the procedures specified below:
- (1) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or
  - (2) Direct mailing by the Tribe to the owners and occupants of property contiguous to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

#### **Section 11.8.4. Issuance of Final TEIR.**

The Tribe shall prepare, certify and make available to the City of Barstow, the County, the State Clearinghouse, and the State Gaming Agency at least fifty-

five (55) days before the completion of negotiations pursuant to section 11.8.7 a Final TEIR, which shall consist of:

- (a) The draft TEIR or a revision of the draft;
- (b) Comments and recommendations received on the draft TEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies commenting on the draft TEIR;
- (d) The responses of the Tribe to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Tribe.

#### **Section 11.8.5.**

The Tribe shall reimburse the City of Barstow and the County for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this section 11.0.

#### **Section 11.8.6. Remedy for Failure to Prepare TEIR**

The Tribe's failure to prepare a TEIR when required may warrant an injunction where appropriate.

#### **Section 11.8.7. Intergovernmental Agreement.**

- (a) Before the commencement of a Project, and no later than the issuance of the Final TEIR (or of any substitute environmental impact report under section 11.8.9) to the City of Barstow, the Tribe shall offer to commence negotiations with the City, and upon the City's acceptance of the Tribe's offer, shall negotiate with the City, and shall enter into an enforceable written agreement with the City (the "Intergovernmental Agreement") with respect to the matters set forth below to the extent they are within the City's jurisdiction:
  - (1) The timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality,

biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

- (2) Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the City of Barstow to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
  - (3) Reasonable compensation for programs designed to address gambling addiction.
  - (4) Mitigation of any effect on public safety attributable to the Project, including any compensation to the City of Barstow as a consequence thereof.
- (b) Before the commencement of a Project, and no later than the issuance of the Final TEIR (or of any substitute environmental impact report under section 11.8.9) to the County, the Tribe shall offer to commence negotiations with the County, and upon the County's acceptance of the Tribe's offer, shall negotiate with the County, and shall enter into an enforceable written agreement with the County (the "Intergovernmental Agreement") with respect to the matters set forth below, to the extent such matters are not within the jurisdiction of the City of Barstow or covered by subdivision (c) herein:
- (1) The timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account

economic, environmental, social, technological, or other considerations.

- (2) Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County and its special districts to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
  - (3) Reasonable compensation for programs designed to address gambling addiction.
  - (4) Mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.
- (c) Before the commencement of a Project, and no later than the issuance of the Final TEIR (or of any substitute environmental impact report under section 11.8.9) to the State Gaming Agency, the Tribe shall negotiate with the State Department of Transportation or the State Designated Agency (if one is designated) and shall enter into an enforceable written agreement with the State Department of Transportation or the State Designated Agency to pay its fair share to timely mitigate the off-reservation traffic impacts of the Project on the State highway system and facilities where such impacts are attributable, in whole or in part, to the Project.
- (d) Nothing in this section 11.8.7 requires the Tribe to enter into any other intergovernmental agreements with a local governmental entity other than as set forth in subdivisions (a) and (b).

### **Section 11.8.8. Arbitration.**

In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an Intergovernmental Agreement between either the County and the Tribe, or the City of Barstow and the Tribe, is not entered within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe and the County, or the Tribe and the City of Barstow (for purposes of this section "the parties") may mutually agree in writing, any party may demand binding arbitration before a single arbitrator pursuant to the Commercial

Arbitration Rules of the American Arbitration Association as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation of its respective agreement:

- (a) The arbitration shall be conducted as follows: Each party to the prospective Intergovernmental Agreement shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to section 11.8.7. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment unless the parties agree to a longer period. As between the Tribe and the County, or the Tribe and the City of Barstow, the arbitrator shall be limited to awarding only one of the offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Environment and on public safety and most reasonably compensates for public services pursuant to section 11.8.7, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the Final TEIR provides the data and information necessary to enable the County and/or the City of Barstow to determine both whether the Project may result in a Significant Effect on the Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor. Review of the resulting arbitration award is waived.
- (b) In order to effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.
- (c) The arbitral award will become part of the written agreement required under section 11.8.7.

### **Section 11.8.9.**

Notwithstanding anything to the contrary herein, any MSA (as defined in section 2.18), entered into before this Compact takes effect pursuant to section 14.1 shall constitute an Intergovernmental Agreement within the meaning of section 11.8.7 and shall satisfy the requirements under section 11.8.7, subdivision (a), to negotiate an Intergovernmental Agreement between the Tribe and the City of Barstow. Said MSA may set requirements for the preparation and distribution of an environmental impact report that supersede the requirements set forth in sections 11.8.1 through 11.8.5 as long said requirements are more stringent than the requirements set forth in those sections and any draft and final version of said environmental impact report is distributed to the County, the State Clearinghouse, and the State Gaming Agency within three (3) days of completion.

## **SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.**

### **Sec. 12.1. General Requirements.**

The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare; provided, however, that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

### **Sec. 12.2. Tobacco Smoke.**

Notwithstanding section 12.1, the Tribe agrees to provide a non-smoking area in the Gaming Facility and to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology, and further agrees not to offer or sell tobacco to anyone under eighteen (18) years of age.

### **Sec. 12.3. Health and Safety Standards.**

For the purposes of this Compact, the Tribe shall:

- (a) Adopt and comply with State public health standards for food and beverage handling. The Tribe will allow, during normal hours of operation, inspection of food and beverage services in the Gaming Facility by State, county, or city health inspectors, whichever

inspector would have jurisdiction but for the Gaming Facility being on Indian lands, in order to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Any report or other writing by said State, county, city or federal health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including an order to enjoin the food and beverage operations of the Gaming Facility where warranted to protect public health or safety.

- (b) Adopt and comply with federal water quality and safe drinking water standards applicable in California. The Tribe will allow, during normal hours of operation, inspection and testing of water quality at the Gaming Facility by State, county, or city health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian lands, in order to assess compliance with these standards, unless inspections and testing are routinely made by an agency of the United States pursuant to federal law to ensure compliance with federal water quality and safe drinking water standards. Any report or other writings by said State, county, city or federal health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including an order to enjoin the use or disposal of water at the Gaming Facility where warranted to protect public health or safety.
- (c) Comply with the building and safety standards set forth in section 6.4.2.
- (d) Adopt and comply with federal and state workplace and occupational health and safety standards. The Tribe will allow inspection of Gaming Facility workplaces by State inspectors, during normal hours

of operation, to assess compliance with these standards, and consents to the jurisdiction of the State agencies charged with the enforcement of those laws, including the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board and Occupational Safety and Health Appeals Board, and of the courts of the State of California for purposes of enforcement.

- (e) Adopt and comply with tribal codes to the extent consistent with the provisions of this Compact and other applicable federal law regarding public health and safety.
- (f) Adopt and comply with standards no less stringent than federal laws and State laws, including remedies therefor, forbidding employers from discrimination in connection with the employment of persons working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability.
- (g) Adopt and comply with State legal standards prohibiting a gambling enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.
- (h) Adopt and comply with State legal standards, if any, prohibiting a gambling or other enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages for no charge or at reduced prices at a gambling establishment, lodging facility, or other enterprise as an incentive or enticement.
- (i) Adopt and comply with State legal standards, if any, prohibiting extensions of credit.
- (j) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gambling establishments.

#### **Sec. 12.4. Tribal Gaming Facility Standards Ordinance.**

The Tribe shall adopt in the form of an ordinance the standards described in subdivisions (a)-(j) of section 12.3 to which the Gaming Operation is held, and shall transmit said ordinance to the State Gaming Agency not later than thirty (30) days after the effective date of this Compact. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal and/or State statute or regulation, as the case may be, in respect of any such matter, the otherwise applicable federal and/or State statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

#### **Sec. 12.5. Insurance Coverage and Claims.**

- (a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher (“Policy”) which provides coverage of no less than ten million dollars (\$10,000,000) per occurrence for bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall waive its right to assert its sovereign immunity up to the limits of the Policy, in accordance with the tribal ordinance referenced in subdivision (b) below, in connection with any claim for bodily injury, personal injury, or property damage, arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe’s land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has waived its right to assert sovereign immunity for the purpose of arbitration of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe’s sovereign immunity for any portion of the claim that exceeds the Policy limits.

- (b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that provides for all of the following:
- (1) The ordinance shall provide that California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that California law governing punitive damages need not be a part of the ordinance.
  - (2) Said ordinance shall also expressly provide for waiver of the Tribe's right to assert sovereign immunity with respect to the arbitration of such claims but only up to the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the Policy limits.
  - (3) Said ordinance shall provide for the Tribe's consent to binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the parties'

obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

- (4) The ordinance may also require that the claimant first exhaust the Tribe's administrative remedies for resolving the claim (hereinafter the "Tribal Dispute Process") in accordance with the following standards: The claimant must bring his or her claim within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process as long as notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180) day limitation period is prominently displayed on the front page of said notice. The ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Process or one hundred eighty (180) days from the date the claim is filed in the Tribal Dispute Process, whichever first occurs, unless the parties mutually agree to a longer period.
- (c) Upon notice that a claimant claims to have suffered an injury or damage covered by this section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribal Dispute Process, if any, and if dissatisfied with the resolution, entitled to arbitrate his or her claim de novo before a retired judge.
- (d) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), the tort law of the State of California, including applicable statutes of limitations, shall apply to all claims of bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; and the Tribe shall be deemed to have waived its right to assert sovereign immunity up to the limits of the Policy in connection with the arbitration of any such claims, any court proceedings based on such arbitration, including the arbitral award resulting therefrom, and any ensuing judgments.
- (e) Employees or authorized agents of the Tribe may not invoke, and the Tribe shall not invoke on behalf of any employee or agent, the Tribe's

sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or authorized agent, without regard to the Tribe's liability insurance limits. Nothing in this subdivision prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.

**Sec. 12.6. Participation in State Statutory Programs Related to Employment.**

- (a) The Tribe agrees that it will participate in the State's workers' compensation program with respect to employees employed at the Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this State or through self-insurance as permitted under the State's workers' compensation laws. All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement. The parties agree that independent contractors doing business with the Tribe are bound by all State workers' compensation laws and obligations.
  
- (b) The Tribe agrees that it will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, which participation shall include compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement. The Tribe may, in lieu of the contributions to the California Unemployment Fund required of employers, elect to finance its liability for unemployment compensation benefits, extended duration benefits, and federal-state extended benefits by any method of financial coverage that is permitted to it in accordance with section 803 of the California Unemployment Insurance Code.

- (c) As a matter of comity, with respect to persons employed at the Gaming Facility, the Tribe shall, subject to its right to finance its liability for benefits pursuant to the last sentence in subdivision (b) above, withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.
- (d) As a matter of comity, the Tribe shall, with respect to the earnings of any person employed at the Gaming Facility, comply with all earnings withholding orders for support of a child, or spouse or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to Chapter 5 (commencing with Section 706.010) of Division 1 of Title 9 of Part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the California Family Code or section 3088 of the Probate Code.

**Sec. 12.7. Emergency Services Accessibility.**

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

**Sec. 12.8. Alcoholic Beverage Service.**

Standards for alcohol beverage service shall be subject to applicable law.

**Sec. 12.9. Possession of Firearms.**

The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, State, or local law enforcement personnel, or tribal law enforcement or security personnel authorized by tribal law and federal or State law to possess firearms at the Facility.

**Sec. 12.10. Labor Relations.**

The Gaming Activities authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Exhibit C, and the Gaming Activities may only continue as long as the Tribe maintains said ordinance. The Tribe shall provide

written notice to the State that it has adopted said ordinance, along with a copy of the ordinance, before commencing the Gaming Activities authorized by this Compact.

## **SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.**

### **Sec. 13.1. Voluntary Resolution.**

In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that arise under this Compact by good faith negotiations whenever possible. Therefore, except for the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the State shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of this Compact, as follows:

- (a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.
- (b) The other party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.
- (c) The parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subdivision (a), unless both parties agree in writing to an extension of time.
- (d) If the dispute is not resolved to the satisfaction of the parties after the first meeting, either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.
- (e) Disagreements that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court in the judicial district where the Tribe's Gaming Facility is

located, or any State court of competent jurisdiction in or over the County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Compact. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

- (f) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the ground that the Tribe has failed to exhaust its State administrative remedies, and in no event may the State be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the State has failed to exhaust any tribal administrative remedies.

### **Sec. 13.2. Arbitration Rules.**

Unless otherwise specified in this Compact, arbitration shall be conducted before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and shall be held in the federal judicial district in which the Tribe's Gaming Facility is located at a location selected by the arbitrator. Each side shall initially bear one-half the costs and expenses of the American Arbitration Association and the arbitrator, but the arbitrator shall award the prevailing party its costs, including the costs of the American Arbitration Association and the arbitrator; however, the parties shall bear their own attorney fees. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, shall give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or State court having jurisdiction thereof.

### **Sec. 13.3. No Waiver or Preclusion of Other Means of Dispute Resolution.**

This section 13.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation.

#### **Sec. 13.4. Limited Waiver of Sovereign Immunity.**

- (a) For the purpose of actions or arbitrations based on disputes between the State and the Tribe that arise under this Compact and the enforcement of any judgment or award resulting therefrom, the State and the Tribe expressly waive their right to assert their sovereign immunity from suit and enforcement of any ensuing judgment or arbitral award and to the arbitrator's jurisdiction and further consent to be sued in federal or state court, as the case may be, provided that (i) the dispute is limited solely to issues arising under this Compact, (ii) neither side makes any claim for monetary damages (except that payment of any money required by the terms of this Compact may be sought, and injunctive relief, specific performance (including enforcement of a provision of this Compact requiring the payment of money to one or another of the parties), and declaratory relief may be sought), and (iii) nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State with respect to any third party that is made a party or intervenes as a party to the action.
- (b) In the event that intervention, joinder, or other participation by any additional party in any action between the State and the Tribe would result in the waiver of the Tribe's or the State's sovereign immunity as to that additional party, the waivers of either the Tribe or the State provided herein may be revoked, except where joinder is required to preserve the court's jurisdiction, in which case the State and the Tribe may not revoke their waivers of sovereign immunity as to each other.
- (c) The waivers and consents to jurisdiction expressly provided for under this section 13.0 and elsewhere in the Compact shall extend to all arbitrations and civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm, modify, or vacate any arbitral award or to enforce any judgment, and any appellate proceeding emanating from any such proceedings. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued are granted by either party.

## **SECTION 14.0. EFFECTIVE DATE AND TERM OF COMPACT.**

### **Sec. 14.1. Effective Date.**

This Compact shall not be effective unless and until all of the following have occurred:

- (a) The Compact is ratified by statute in accordance with state law;
- (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B);
- (c) The State's compact with the Los Coyotes Band has been ratified by statute in accordance with state law; and
- (d) The Stipulation for Entry of Judgment in *Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant*, case nos. C 97-4693 CW and C 99-4995 CW, in the United States District Court for the Northern District of California, has been executed and approved by the District Court, and a judgment pursuant to said stipulation has been entered by the District Court.

### **Sec. 14.2. Term of Compact; Termination.**

- (a) Once effective, this Compact shall be in full force and effect for state law purposes until December 31, 2025. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact.
- (b) Either party may bring an action in federal court, after providing a thirty (30) day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact or that a material part of this Compact has been invalidated. Unless said declaration is stayed, upon issuance of such a declaration by the trial court, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the Superior Court for San Bernardino County. The parties expressly

waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in section 13.4.

- (c) If this Compact does not take effect prior to August 31, 2007, it shall be deemed null and void unless the Tribe and the State agree in writing to extend the date.
- (d) If the 25 Acre Parcel is not taken into trust and determined eligible for Class III Gaming pursuant to section 20(b)(1)(A) of IGRA prior to May 31, 2007, the Compact shall be deemed null and void unless the Tribe and the State agree in writing to extend the date.
- (e) If the settlement agreement, stipulation for entry of judgment, or judgment in the action in the U.S. District Court for the Northern District of California entitled *Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiffs v. State of California, Defendant*, case nos. C97-4693 CW and C99-4995 CW, is disapproved by the Secretary of Interior pursuant to 25 U.S.C. section 81, or is adjudicated as invalid, in whole or in material part, in a final decision of a federal or state court, from which no further direct review may be taken, either the State or the Tribe may unilaterally terminate this Compact upon service of written notice upon the other party.

## **SECTION 15.0. AMENDMENTS; RENEGOTIATIONS.**

### **Sec. 15.1. Amendment by Agreement.**

The terms and conditions of this Compact may be amended at any time by the mutual and written agreement of both parties.

### **Sec. 15.2. Requests to Amend or Renegotiate.**

All requests to amend or renegotiate this Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this section, the parties shall confer promptly and determine within forty-five (45) days of the request a schedule for commencing negotiations, and both parties shall negotiate in good faith. The Chairperson of the Tribe and the Governor of the

State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

**SECTION 16.0. NOTICES.**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by first-class mail or facsimile transmission to the following addresses, or to such other address as either party may designate by written notice to the other:

Governor  
Attention: Legal Affairs Secretary  
Governor's Office  
State Capitol  
Sacramento, California 95814

Tribal Chairperson  
Big Lagoon Rancheria  
P.O. Box 3060  
Trinidad, California 95570

**SECTION 17.0. CHANGES TO IGRA.**

This Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Compact, and when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Compact, except to the extent that federal law validly mandates retroactive application without the State's or the Tribe's respective consent.

**SECTION 18.0. MISCELLANEOUS.**

**Sec. 18.1. Third Party Beneficiaries.**

Except to the extent expressly provided under this Compact, this Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

### **Sec. 18.2. Complete Agreement.**

This Compact, together with all exhibits and approved amendments, and the settlement agreement and the Stipulation for Entry of Judgment in *Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant*, case nos. C 97-4693 CW and C 99-4995 CW, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

### **Sec. 18.3. Construction.**

Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in another tribal-state compact of language that is present in this Compact, shall be a factor in construing the terms of this Compact.

### **Sec. 18.4 Successor Provisions.**

Wherever this Compact makes reference to a specific statutory provision or set of rules, it also applies to said provision or rules, as they may be amended from time to time, and any successor provision or set of rules.

### **Sec. 18.5. Representations.**

- (a) The Tribe expressly represents that as of the date of the undersigned's execution of this Compact the undersigned has the authority to execute this Compact on behalf of the Tribe, including any waiver of the right to sovereign immunity therein, and will provide written proof of such authority and of the ratification of this Compact by the tribal governing body to the Governor no later than thirty (30) days after the execution of this Compact by the undersigned.
- (b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
- (c) In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those

representations as of the date of the Tribe's execution of this Compact through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Compact or written proof of ratification by the Tribe's governing body, the Governor shall have the right to declare this Compact null and void.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Big Lagoon Rancheria.

STATE OF CALIFORNIA

BIG LAGOON RANCHERIA

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By Arnold Schwarzenegger  
Governor of the State of California

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By Virgil Moorehead  
Chairperson of the  
Big Lagoon Rancheria

**ATTEST:**

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Bruce McPherson  
Secretary of State, State of California

## **EXHIBITS**

- A. Off-Reservation Environmental Impact Analysis Checklist
- B. Survey
- C. Tribal Labor Relations Ordinance
- D. Map and Description of 25 Acre Parcel

# EXHIBIT A

## Off-Reservation Environmental Impact Analysis Checklist

### I. Aesthetics

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?				
b) Substantially damage off-reservation scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?				

### II. Agricultural Resources

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use?				

### III. Air Quality

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Conflict with or obstruct implementation of the applicable air quality plan?				
b) Violate any air quality standard or contribute to an existing or projected air quality violation?				
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?				
e) Create objectionable odors affecting a substantial number of people off-reservation?				

#### **IV. Biological Resources**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Have a substantial adverse impact, either directly or through habitat modifications, on any species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?				
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				

## V. Cultural Resources

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?				
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?				
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?				

## VI. Geology and Soils

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Expose off-reservation people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: <ul style="list-style-type: none"> <li>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</li> <li>ii) Strong seismic ground shaking?</li> <li>iii) Seismic-related ground failure, including liquefaction?</li> <li>iv) Landslides?</li> </ul>				
b) Result in substantial off-reservation soil erosion or the loss of topsoil?				

## VII. Hazards and Hazardous Materials

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?				

- b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?
- d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires.

### VIII. Water Resources

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Violate any water quality standards or waste discharge requirements?				
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation off-site?				
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding off-site?				
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff off-reservation?				
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?				
g) Expose off-reservation people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				

## IX. Land Use

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?				
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?				

## X. Mineral Resources

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?				
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				

## XI. Noise

<b>Would the project result in:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?				
c) A substantial permanent increase in ambient noise levels in the off-reservation vicinity of the project?				
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?				

## XII. Population and Housing

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Induce substantial off-reservation population growth?				
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?				

## XIII. Public Services

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the off-reservation public services:				
Fire protection?				
Police protection?				
Schools?				
Parks?				
Other public facilities?				

## XIV. Recreation

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				

## XV. Transportation / Traffic

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Cause an increase in off-reservation traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?				
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated off-reservation roads or highways?				
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				
d) Result in inadequate emergency access for off-reservation responders?				

## XVI. Utilities and Service Systems

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?				
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?				
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?				
d) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				

## XVII. Cumulative Effects

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.				

## EXHIBIT B

### TELEPHONE SURVEY METHODOLOGY

The telephone survey shall be conducted among at least 400 randomly selected Barstow city residents. These residents must be selected using random digit dialing techniques to include unlisted as well as listed phone numbers. Using this method to survey the general population will allow for diversity in public sentiment, including men and women from all income levels, ages, and races.

Given the sample size of at least 400 and the method of random selection, the statistical margin of error can be reliably set at plus or minus five percent within a 95 percent degree of confidence. In other words, in 95 out of every 100 responses, the “surveyed value” will be within plus or minus five percent of the “true value.”

The survey must test respondents’ support for the proposed gambling casino in Barstow, using the questions below. The survey would also ask questions to determine the demographics of the sample (e.g. age, race, income). These results will be compared with current census data to ensure that the sample is representative of the community.

### SURVEY QUESTIONS

Hello, my name is \_\_\_\_\_ and I’m with \_\_\_\_\_, a public opinion research firm. We’re doing a study on problems and issues in the Barstow area and would like to have your opinions. Your responses are voluntary and completely confidential. May we have just a few minutes of your time? [Ask for appropriate member of household 18 years or older, as dictated by generally accepted survey techniques.]

1. Do you live in the City of Barstow?

Yes ..... Continue  
No ..... Ask for Barstow resident. If none, thank  
and terminate.

2. Have you read, seen or heard anything lately about a proposed gaming casino in Barstow?

Yes ..... 1  
No ..... 2  
Don’t Know ..... 3  
Refused ..... 4

3. Do you (ROTATE: support or oppose) Native American owned casino gambling near the outlet mall in Barstow?

Support ..... 1  
Oppose ..... 2  
Don't Know ..... 8  
Refused ..... 9

4. (IF SUPPORT/OPPOSE, ASK: Would you say you strongly (support/oppose) that Native American owned casino gambling or just somewhat (support/oppose) it?)

Strongly support..... 1  
Somewhat support ..... 2  
Neither support nor oppose..... 3  
Somewhat oppose ..... 4  
Strongly oppose ..... 5  
Don't Know ..... 6  
Refused ..... 7

Finally, just a few questions for statistical purposes, and we'll be through.

5. Are you registered to vote in the city of Barstow at this address?

Yes ..... 1  
No ..... 2  
Don't Know ..... 3

6. What is your approximate age?

18 to 24 ..... 1  
25 to 29 ..... 2  
30 to 34 ..... 3  
35 to 39 ..... 4  
40 to 44 ..... 5  
45 to 49 ..... 6  
50 to 54 ..... 7  
55 to 59 ..... 8  
60 to 64 ..... 9  
65 and Over ..... 0  
Refused ..... X

7. Which of the following income groups include your TOTAL FAMILY INCOME in 2004 before taxes? Just tell me the letter for the correct category. (READ A-G)

- A. Under 20,000 (19,999 and lower) ..... 2
- B. \$20,000 to 29,999..... 3
- C. \$30,000 to 39,999..... 4
- D. \$40,000 to 49,999..... 5
- E. \$50,000 to 74,999..... 6
- F. \$75,000 to 99,999..... 7
- G. \$100,000 or more ..... 8
- Ref/DK (Volunteered) ..... 9

8. In addition to being an American, is your main ethnic group or ancestry British, German, African American, Irish, Hispanic American or something else?  
IF SOMETHING ELSE, ASK WHAT

- British/English/Scots ..... 1
- German ..... 2
- Dutch..... 3
- Irish..... 4
- Polish..... 5
- Italian ..... 6
- Scandinavian/Swedish/Norwegian ..... 7
- French..... 8
- African American/Black ..... 9
- Spanish American/Hispanic American ..... 0
- Arab American/Middle Eastern ..... X
- Asian American/Japanese/Chinese/Korean..... Y
- Other White ..... 11
- Other Non-White..... 12
- Ref/DK ..... 13

That completes our interview. Thank you for sharing your opinions.

9. Gender (BY OBSERVATION: DO NOT ASK)

- Male.....1
- Female.....2

## **EXHIBIT C**

### **TRIBAL LABOR RELATIONS ORDINANCE**

#### **Section 1: Threshold of applicability**

(a) Upon the employment of 250 or more persons in a Tribal Casino and Related Facility, if any, the provisions of this Tribal Labor Relations Ordinance (TLRO or Ordinance) shall become effective immediately. For purposes of this Ordinance, a “Tribal Casino” is one in which class III gaming is conducted pursuant to the tribal-state compact between the State of California and this Tribe. A “Related Facility” is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Upon the request of a labor organization, the Tribal Gaming Agency shall certify the number of employees in the Tribal Casino or other Related Facility as defined in subdivision (a) above. Either party may dispute the certification of the Tribal Gaming Agency to the Tribal Labor Panel.

#### **Section 2: Definition of Eligible Employees**

The provisions of this Ordinance shall apply to any person (hereinafter “Eligible Employee”) who is employed within the Tribal Casino or other Related Facility, except for any of the following:

(a) any employee who is a supervisor, defined as any individual having authority, in the interest of the Tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(b) any employee of the Tribal Gaming Agency;

(c) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(d) any cash operations employee who is a “cage” employee, money counter, or auditor; or

(e) any dealer.

### **Section 3: Non-interference with regulatory or security activities**

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Agency to regulate the gaming operation in accordance with the Tribe’s National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the Tribal Casino’s surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe’s gaming operations. The Tribal Gaming Agency is specifically excluded from the definition of Tribe and its agents.

### **Section 4: Eligible Employees free to engage in or refrain from concerted activity**

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, including picketing and leafleting adjacent or leading to, but not inside, the Tribal Casino, and shall also have the right to refrain from any or all such activities.

### **Section 5: Unfair labor practices for the Tribe**

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

(a) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(b) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified labor organization from agreeing to union security or dues check off;

(c) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(d) to refuse to bargain collectively with the representatives of Eligible Employees.

## **Section 6: Unfair labor practices for a labor organization**

It shall be an unfair labor practice for a labor organization or its agents:

(a) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(b) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or secondary boycott or a refusal in the course of his or her employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce: provided, that nothing contained in this clause (b) shall be construed to make unlawful any primary strike or primary picketing;

(c) to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(d) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein; or

(e) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

## **Section 7: Tribe and union neutrality**

(a) The Tribe agrees that if a labor organization first offers in writing (i) that except with respect to collective bargaining negotiations, it will not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the Tribal Casino or Related Facility, (ii) that it will not disparage the Tribe for purposes of organizing Eligible Employees, and (iii) that it and its local affiliates will agree to resolve all issues, except for collective bargaining impasses,

through binding dispute resolution mechanisms set forth in section 13 herein, the Tribe shall thereafter:

(1) recognize the labor organization if it is certified pursuant to section 10, subdivision (f); and

(2) not express or imply any opposition to Eligible Employees choosing to be represented by a labor organization for purposes of collective bargaining, as guaranteed in this TLRO, nor express or imply any opposition to the selection by Eligible Employees of that particular organization to be their representative in collective bargaining or any preference for another labor organization.

(b) If a United States Court of Appeals issues a final order upholding National Labor Relations Board jurisdiction over tribal casinos that is not later superseded by a decision of the United States Supreme Court, then the labor organization's offer in subdivision (a) shall be deemed to be an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the labor organization and a waiver by the labor organization of any right to file any form of action or proceeding with the National Labor Relations Board, and the Tribe agrees to accept such offer.

(c) Except as agreed in subdivision (a) above, the Tribe's and labor organization's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.

### **Section 8: Access to Eligible Employees**

(a) Access shall be granted to the labor organization for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the Tribal Casino or Related Facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the labor organization and/ or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the Tribal Casino or Related Facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the labor organization in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the labor organization's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the Tribal Casino in the following areas:

(1) security and surveillance systems throughout the Tribal Casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The Tribe shall provide to the labor organization, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude the Tribe from voluntarily providing an eligibility list at an earlier point of a union organizing campaign.

(e) The Tribe agrees to facilitate the dissemination of information from the labor organization to Eligible Employees at the Tribal Casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

## **Section 9: Tribal preference explicitly permitted**

Nothing in this Ordinance shall preclude the Tribe from giving preference in employment, promotion, seniority, lay-offs or retention to members of the Tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding said preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding said preference and this Ordinance, the tribal law, tribal ordinance, or the Tribe's customs and traditions shall govern.

## **Section 10: Selection of representatives**

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in an election to be held within thirty (30) days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the Tribe and/or employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of Eligible Employees if the labor organization has received the majority of votes by Eligible Employees voting in an election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or labor organization, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the

Eligible Employees in the unit at any point before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization.

(d) The Tribe or the labor organization may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A labor organization which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this Ordinance at that particular Tribal Casino or Related Facility until one year after the election was lost.

(f) In the event the labor organization makes the written offer set forth in section 7, dated and signed authorized cards from at least fifty percent (50%) plus one of the Eligible Employees within the bargaining unit verified by the election officer shall result in certification of the labor organization as the exclusive collective bargaining representative of the Eligible Employees. A labor organization seeking to invoke the provisions of this subdivision shall notify the Tribe and the administrator of the Tribal Labor Panel of such intent in writing. If the labor organization fails to be certified as the exclusive collective bargaining representative pursuant to this subdivision within two (2) years following the date of the written notice invoking this subdivision, the labor organization may not invoke any provision of this labor Ordinance for two (2) years thereafter.

### **Section 11: Collective bargaining**

Upon recognition, the Tribe and the labor organization will negotiate in good faith for a collective bargaining agreement covering bargaining unit Eligible Employees represented by the labor organization.

### **Section 12: Decertification of bargaining agent**

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified labor organization, will result in a secret ballot election to be held thirty (30) days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the

labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the labor organization of the intent of the Eligible Employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the Eligible Employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the labor organization, the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor organization if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) days and no less than sixty (60) days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The Tribe or the labor organization may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

### **Section 13: Binding dispute resolution mechanism**

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. All matters related to organizing, election procedures and alleged unfair labor practices

prior to the labor organization becoming certified as the collective bargaining representative of bargaining unit Eligible Employees, shall be resolved by the designated tribal forum within thirty (30) working days. These time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below.

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this Ordinance or that have adopted any other tribal labor relations ordinance provided for in a compact with the State of California for class III gaming. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3) member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. In the event there is a three (3) member panel, seven (7) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or Tribal Labor Panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within ninety (90) days, or in the event there is no Tribal Court,

the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

## **EXHIBIT D**

### **MAP AND DESCRIPTION OF 25 ACRE PARCEL**

The 25 Acre Parcel consists of Assessors Parcel No. 0428-171-69 and is composed of 25 acres more or less.

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.



Sec. 27&34, T.9N., R.2W., S.B.B.&M.

City of Barstow  
Barstow Unified  
Tax Rate Area  
56128,9003  
9027,9050

0428-17

